

Appeal from decision of Utah State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. U MC 172725 through U MC 172736.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or a notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any

act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Authority: Generally -- Constitutional Law: Generally -- Statutes

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

4. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Abandonment

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that his proof of labor was timely filed is insufficient to rebut the presumption.

APPEARANCES: Claude Marcus, Esq., Boise, Idaho, for appellant.

OPINION OF ADMINISTRATIVE JUDGE HENRIQUES

L. L. Anderson appeals the Utah State Office, Bureau of Land Management (BLM), decision of September 9, 1982, which declared the unpatented Linzy Pines Nos. 1 through 12 lode mining claims, U MC 172725 through U MC 172736, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The claims were located in October 1962 or August 1964. Copies of the notices of location were filed with BLM October 19, 1979, but no proof of labor or notice of intention to hold was submitted with the notices of location. A proof of labor for 1980 was filed with BLM October 2, 1980, and for 1981, on October 20, 1981.

Appellant contends

1. Said determinations improperly interpret the Federal Land Policy and Management Act of 1976.
2. If such federal act is correctly interpreted by said office such law effects an unconstitutional taking of private property without due process.
3. The identified decisions are arbitrary, without valid grounds and were entered prematurely without hearing or notice.
4. Factually, the decisions are erroneous and invalid since appellant did file in 1979 evidence of assessment work on the subject unpatented claims.

Section 314 (a) of FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976), reads:

The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976 and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim * * *, an affidavit of assessment work performed thereon, * * *.

(2) File in the office of the Bureau designated by the Secretary, a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, * * *.

[1] Section 314 of FLPMA specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before December 22, 1979, and prior to December 31 of every calendar year thereafter. Such filing must be made both in the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment in the proper county of a proper recording of evidence of assessment work or a notice of intention to hold the mining claim does not relieve the claimant from recording a copy of the instrument in the proper office of BLM under section 314 of FLPMA and the implementing regulations. Thomas Mason, 64 IBLA 104 (1982); Enterprise Mines, Inc., 58 IBLA 372 (1981); Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314 of FLPMA are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., supra; Fahey Group Mines, Inc., 58 IBLA 88 (1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting

FLMPA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, *supra*.

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Sidney O. Smith, 62 IBLA 378 (1982); Fahey Group Mines, Inc., *supra*; Lynn Keith, *supra*; Thomas F. Byron, 52 IBLA 49 (1981).

[3] Appellant's challenge of the constitutionality of the statute cannot be sustained. To the extent that due process of law requires that claimant be afforded some form of hearing prior to declaring the unpatented mining claims abandoned and void for failure to file timely the instruments required by section 314 of FLPMA, that requirement is satisfied by claimant's right of appeal to this Board. Sidney O. Smith, *supra*; Edgar W. Cook, 58 IBLA 358 (1981); John J. Schnabel, 50 IBLA 201 (1980); Dorothy Smith, 44 IBLA 25 (1979). See United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966). The applicable regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981).

With respect to the constitutionality of the statute, the Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Sidney O. Smith, *supra*; Fahey Group Mines, Inc., *supra*; Lynn Keith, *supra*; Alex Pinkham, 52 IBLA 149 (1981).

[4] Despite appellant's allegation that the proof of labor was properly filed with BLM in 1979, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). As a matter of practice, BLM date stamps documents upon receipt and then places them in the proper file. BLM has reported it has no record of receiving the proof of labor in 1979 for these claims. No evidence beyond appellant's bare assertion suggests the 1979 proof of labor was filed with the BLM office on or before October 22, 1979, and that assertion is insufficient to rebut the established legal presumption of regularity of official acts of public officers discharging their official duties. Virginia White, 62 IBLA 215 (1982); Jayne A. McHargue, 61 IBLA 163 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge